IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

Crl.MC.No. 2703 of 2007()

AGAINST THE ORDER DATED 09/08/2007 IN CC. 287 /2007 IN CMP.2418/2007 of JUDL.MAGISTRATE OF FIRST CLASS-II, MANANTHAVADY

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PETITIONER:

M.VENUGOPALAN, AGED 51 YEARS,
S/O GOPALAN NAMBIAR, 'SARANGA' VEEDU,
PERUVAKA, MANANTHAVADY.

BY ADV. SRI.M.ASOKAN
SRI.DEVAPRASANTH.P.J.

RESPONDENTS:

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1. E.U.ABRAHAM, AGED 56 YEARS,
S/O.ULAHANNAN, ILLAYIDATH VEEDU,
PAYYAMPALLY POST, MANANTHAVADY.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Crl.M.C. No.2703 Of 2007

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Dated this the 23rd day of August, 2007

ORDER

The petitioner is the accused in a prosecution, inter alia, under Section 420 IPC. Proceedings have been initiated on the basis of a private complaint filed by the respondent-complainant. Cognizance has been taken. The learned Magistrate has issued search warrant to search and produce the vehicle. The alleged crime has been committed in respect of that vehicle transaction.

2. The petitioner has come to this court with a prayer that proceedings initiated against him may be quashed. He further prays that the search warrant issued against him may also be quashed.

3. According to me, it is for the petitioner to appear before the learned Magistrate and make all his submissions before the learned Magistrate. He can claim discharge under Sec.245(2) or 245(1) Cr.P.C. He can produce the vehicle before the learned Magistrate and claim release of the vehicle raising all his contentions. At any rate, I do not find any merit in the present

prayer to invoke the powers under Sec.482 Cr.P.C to quash the proceedings. The jurisdiction which is sought to be invoked is the extraordinary inherent jurisdiction available under Sec.482 Cr.P.C.

4. It is by now trite that such jurisdiction has to be invoked sparingly and in exceptional cases only in aid of justice. Such jurisdiction is certainly not to be invoked as a matter of course. Merely because of the possibility or probability of the contentions of the petitioner being accepted and upheld by the learned Magistrate when he considers claim for discharge or final claim for acquittal, it is not necessary for this Court to invoke the extraordinary inherent jurisdiction. Has there been failure of justice or abuse of process of the Court? Has there been miscarriage of justice? These are the crucial questions which would weigh with the Court while considering the prayer for invocation of the jurisdiction under Sec.482 Cr.P.C.

5. Having considered all the relevant inputs, I find this is not fit a case where powers under Section 482 Cr.P.C. can or ought to be invoked in favour of the petitioner. I am satisfied

that this is an eminently fit case where the petitioner must appear before the learned Magistrate and raise all his contentions .

6. In the result this Crl.M.C. is dismissed. I may hasten to observe that the dismissal of this petition will not fetter the rights of the petitioner to raise all his relevant, appropriate and necessary contentions before the learned Magistrate in his attempt to claim discharge under Section 245(1)/(2) and to claim to release of the vehicle to him.

Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE